

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for September 14, 2004 PLANNING COMMISSION MEETING

PROJECT #: Miscellaneous #05020
Reasonable Accommodation

PROPOSAL: Request for a modification of the zoning requirement that group homes in the R-4 zoning district be separated by 1,200 feet.

ADDRESS: 416 North Coddington Avenue

CONCLUSION: This request for a reasonable accommodation is premature since there is not an existing group home in the area that would prevent Applicant from obtaining a conditional use permit for this address. Applicant is requesting the same accommodation on a neighboring address; action on one of these items should depend on the other being withdrawn and established as a group home. The Planning Commission must forward a recommendation to the City Council within 45 days of the date of referral.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 5 and the east 10 feet of vacated North Coddington Avenue adjacent thereto, Capitol Beach Village, located in the SW1/4 Sec 21 T10N R6E, Lancaster County, NE.

EXISTING LAND USE AND ZONING: Single-Family R-4 Residential

STAFF FINDINGS:

1. Applicant's facility at 416 North Coddington currently serves 3 residents with developmental disabilities. Since there are no more than 3 residents, this facility meets the definition of "family" and may be located in any dwelling.
2. LMC §27.03.300 defines a group home as "a facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care."
3. The addition of another developmentally disabled resident to this facility would make this a group home under the Zoning Ordinance.
4. LMC §27.17.030 requires group homes in the R-4 district to obtain a conditional use permit, which requires that "the distance between the proposed use and any existing group home measured from lot line to lot line is not less than 1,200 feet."

5. There is not an existing group home within 1,200 feet of this facility. However, there are several nearby residences used by developmental disability service providers to house up to 3 clients, including Applicant's own facility located at 424 North Coddington Avenue..
6. LMC Chapter 1.28.50 identifies the findings required to approve this request:

(1) Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts, and that the accommodation requested is necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

Applicant asserts they have a client who meets the definition of disabled who will reside at this location, but requires this accommodation to do so.

Applicant serves persons with developmental disabilities, and the existence of a group home within 1,200 feet of this facility would preclude this from becoming a group home under the zoning ordinance. A reasonable accommodation would be required to house an additional person here.

(2) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit, or if alternative accommodations would be suitable based on the circumstances of this particular case.

Applicant asserts the only alternative to housing an additional resident in this location is to purchase or rent another dwelling somewhere within the city, and the cost to do so outweighs the benefit to their client.

There are two potential reasonable accommodations that would allow Applicant to house an additional person in a facility located within 1,200 feet of another. One is a request to allow another resident. The other is to request that the spacing standard be modified for a specific address.

(3) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

Applicant has not asserted that granting this request will not impose an undue financial or administrative burden on the City.

The spacing standard minimizes the concentration of group home facilities within an area. Even so, facilities with 3 residents may be located in any number of dwellings within the same area. Allowing one of those 3-resident facilities to have one additional person would not create an undue financial or administrative burden on the City. By

Reasonable Accommodation - 416 North Coddington Avenue

contrast, modifying spacing standards on a case-by-case basis would impose an administrative burden on the City.

(4) If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

Applicant has not asserted that their request is consistent with either the Comprehensive Plan or Zoning Ordinance.

In a given group home radius, there can only be one group home with up to 15 residents, and any number of facilities with 3 or fewer residents. Allowing one 3-resident facility within that area to have 4 residents would still comply with the Comprehensive Plan land use designation and with the general purpose and intent of the zoning ordinance.

7. Recent changes to LMC Chapter 1.28 requiring additional supporting information be provided with the application were not in effect at the time this application was filed. This additional information has been requested, but had not been received at the time of this report.
8. Planning Staff suggest this request is premature and approval of this request should depend upon the other request in this area being withdrawn and established as a group home.
9. This application was referred to the Planning Department on August 10, 2005. A recommendation to the City Council is due on or before September 24, 2005.
10. Applicant's written request for reasonable accommodation is attached.

CONDITIONS:

1. Prior to approval of this request, Applicant must obtain a conditional use permit from the Building and Safety Department for 416 North Coddington Avenue establishing that address as a group home, and withdraw MISC #05020.

Prepared by

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Misc #05020

Page 4

Reasonable Accommodation - 416 North Coddington Avenue

Planner

Date: September 1, 2005

Applicant Scott LeFevre
and Developmental Services of Nebraska, Inc.
Contact: 2610 West "M" Court
Lincoln, NE 68522
435.2800



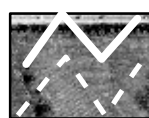
2005 aerial

Miscellaneous #05020 **416 North Coddington Ave.**

Zoning:

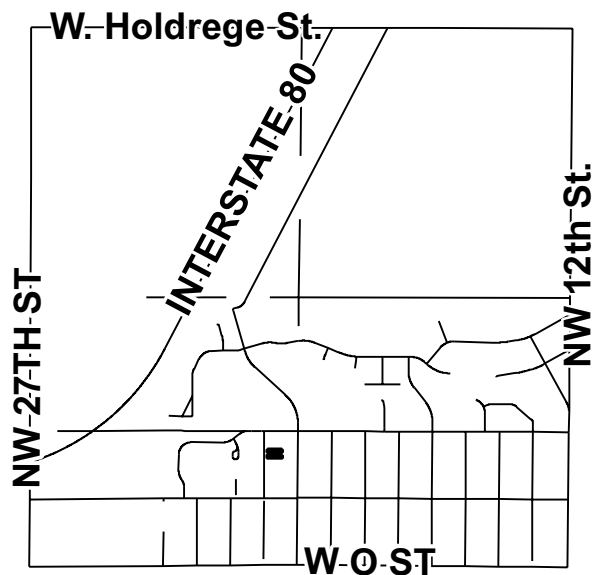
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
 Sec. 21 T10N R6E



Zoning Jurisdiction Lines

City Limit Jurisdiction



MISC 05020

**Request for Reasonable Accommodation Pursuant to
Lincoln Municipal Ordinance No. 18536**

Applicant: Developmental Services of Nebraska, Inc. ("DSN")

Address: 416 North Coddington Avenue

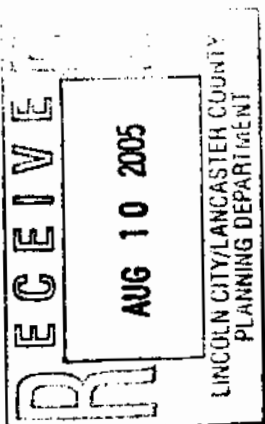
Current Use: Community based residential home for persons with developmental disabilities

Basis: DSN is providing community based residential housing for persons with developmental disabilities. The residents of the home are persons with disabilities under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("FHA"), the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* ("Section 504").

Law: DSN is requesting a reasonable accommodation from Code § 27.11.030(b)(2), which prohibits DSN from operating its home because there is another "group home" as that term is defined by the Lincoln Municipal Code within one-half mile measured from lot line to lot line.

Reason: DSN seeks to increase the number of persons with developmental disabilities it is currently serving at 416 North Coddington Avenue from 3 to 4. Section 27.11.030(b)(2) of the Lincoln Municipal Code currently prohibits DSN from operating a group home for four or more persons with developmental disabilities at 416 North Coddington Avenue. The requested accommodation is financially and therapeutically necessary.

Financially, each of the residents of the home is allotted a minimal amount of funds to provide for their housing, food, and other daily expenses. Therefore, unlike many persons without disabilities, they have no choice but to live in a community residential setting like that offered by DSN. Moreover, by housing four persons in this home rather than 3, DSN is able to more effectively use these limited funds to provide a higher level of assistance to the residents and thus improve the skills the residents need to function in society and to lead a life as normalized as possible. The alternative to adding one more person to this home is locating and renting another home for the persons waiting for the community based residential treatment provided by DSN. Because the costs associated with locating, renting, furnishing, paying security deposits, utilities, etc. far outweigh permitting the addition of one more person to this home we feel that it is a reasonable request. Furthermore DSN would be unable to serve as many persons with



disabilities. Consequently, such persons will be unable to leave the institutional setting in which they currently reside and receive substandard treatment.

Therapeutically, community based residential treatment allows persons with developmental disabilities, mental illness and behavioral challenges to gain the skills, knowledge and experience to increasingly use and benefit from the resources and settings available to all citizens in our community. These persons are best served in a residential setting and the only way to provide this service is for such persons to live in a group home. In DSN's absence, those currently in services would be placed in institutions or detention settings which are not able to address the underlying cause of their maladaptive behavior – their disabilities. Although often the individual's behavior improves in detention, maladaptive behavior quickly resurfaces after the individual has been placed back into the community. DSN also must serve persons with similar disabilities in this home. Receiving community based residential treatment with persons with similar disabilities increases the residents chances of successfully improving the skills necessary to function in society and to lead a life as normalized as possible. With the addition of another person to this location we are able to provide more staffing which is therapeutically beneficial to everyone in the environment. This leads to better outcomes for those in services.

Finally, it is important to note that requiring DSN to show that there is no other location in the City in which it could operate its home is not a proper inquiry under the federal laws prohibiting disability discrimination. Indeed, the federal Fair Housing Act requires the City to grant DSN the requested accommodation if it "may be necessary" to live in a home of its choice. The court in *United States v. City of Chicago Heights*, 161 F.Supp.2d 819, 836 (N.D. Ill. 2001), explained:

No court has ever placed the burden on a group home to show that its desired location is necessary or somehow unique in its ability to ameliorate the effects of its residents' disabilities. Rather, courts have interpreted the FHAA to require a showing that the requested accommodation is *one way* of ameliorating the effects of the disabilities. See, e.g., *Oconomowoc Residential Programs, Inc. v. City of Greenfield*, 23 F.Supp.2d 941, 958 E.D.Wis. 1998) ("[T]he CBRF is one mode of ameliorating [plaintiff's residents'] inability to live independently"). If the City's interpretation of the reasonable accommodation test

[that the group home must prove there is no other area in the City in which it could operate] were the rule, it is doubtful that any group home ever could prevail on a FHAA claim, because there will always be some other parcel of property upon which a comparable residence could be established.

There is no alternative reasonable accommodation that would provide an equivalent level of benefit of which DSN is aware.

DOCS/676987.1